

SECOND REGULAR SESSION

# HOUSE BILL NO. 1817

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE COX.

5962L.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 558.019, RSMo, and to enact in lieu thereof one new section relating to the sentencing advisory commission, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 558.019, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 558.019, to read as follows:

558.019. 1. This section shall not be construed to affect the powers of the governor under article IV, section 7, of the Missouri Constitution. This statute shall not affect those provisions of section 565.020, section 558.018 or section 571.015, which set minimum terms of sentences, or the provisions of section 559.115, relating to probation.

2. The provisions of subsections 2 to 5 of this section shall be applicable to all classes of felonies except those set forth in chapter 195, and those otherwise excluded in subsection 1 of this section. For the purposes of this section, "prison commitment" means and is the receipt by the department of corrections of an offender after sentencing. For purposes of this section, prior prison commitments to the department of corrections shall not include commitment to a regimented discipline program established pursuant to section 217.378. Other provisions of the law to the contrary notwithstanding, any offender who has pleaded guilty to or has been found guilty of a felony other than a dangerous felony as defined in section 556.061 and is committed to the department of corrections shall be required to serve the following minimum prison terms:

(1) If the offender has one previous prison commitment to the department of corrections for a felony offense, the minimum prison term which the offender must serve shall be forty percent of his or her sentence or until the offender attains seventy years of age, and has served at least thirty percent of the sentence imposed, whichever occurs first;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18           (2) If the offender has two previous prison commitments to the department of corrections  
19 for felonies unrelated to the present offense, the minimum prison term which the offender must  
20 serve shall be fifty percent of his or her sentence or until the offender attains seventy years of  
21 age, and has served at least forty percent of the sentence imposed, whichever occurs first;

22           (3) If the offender has three or more previous prison commitments to the department of  
23 corrections for felonies unrelated to the present offense, the minimum prison term which the  
24 offender must serve shall be eighty percent of his or her sentence or until the offender attains  
25 seventy years of age, and has served at least forty percent of the sentence imposed, whichever  
26 occurs first.

27           3. Other provisions of the law to the contrary notwithstanding, any offender who has  
28 pleaded guilty to or has been found guilty of a dangerous felony as defined in section 556.061  
29 and is committed to the department of corrections shall be required to serve a minimum prison  
30 term of eighty-five percent of the sentence imposed by the court or until the offender attains  
31 seventy years of age, and has served at least forty percent of the sentence imposed, whichever  
32 occurs first.

33           4. For the purpose of determining the minimum prison term to be served, the following  
34 calculations shall apply:

35           (1) A sentence of life shall be calculated to be thirty years;

36           (2) Any sentence either alone or in the aggregate with other consecutive sentences for  
37 crimes committed at or near the same time which is over seventy-five years shall be calculated  
38 to be seventy-five years.

39           5. For purposes of this section, the term "minimum prison term" shall mean time  
40 required to be served by the offender before he or she is eligible for parole, conditional release  
41 or other early release by the department of corrections.

42           6. (1) A sentencing advisory commission is hereby created to consist of eleven  
43 members. One member shall be appointed by the speaker of the house. One member shall be  
44 appointed by the president pro tem of the senate. One member shall be the director of the  
45 department of corrections. Six members shall be appointed by and serve at the pleasure of the  
46 governor from among the following: the public defender commission; private citizens; a private  
47 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members  
48 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.  
49 All members shall be appointed to a four-year term. All members of the sentencing commission  
50 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory  
51 commission at the pleasure of the governor.

52           (2) The commission shall study sentencing practices in the circuit courts throughout the  
53 state for the purpose of determining whether and to what extent disparities exist among the

54 various circuit courts with respect to the length of sentences imposed and the use of probation  
55 for offenders convicted of the same or similar crimes and with similar criminal histories. The  
56 commission shall also study and examine whether and to what extent sentencing disparity among  
57 economic and social classes exists in relation to the sentence of death and if so, the reasons  
58 therefor sentences are comparable to other states, if the length of the sentence is appropriate, and  
59 the rate of rehabilitation based on sentence. It shall compile statistics, examine cases, draw  
60 conclusions, and perform other duties relevant to the research and investigation of disparities in  
61 death penalty sentencing among economic and social classes.

62 (3) [The commission shall establish a system of recommended sentences, within the  
63 statutory minimum and maximum sentences provided by law for each felony committed under  
64 the laws of this state. This system of recommended sentences shall be distributed to all  
65 sentencing courts within the state of Missouri. The recommended sentence for each crime shall  
66 take into account, but not be limited to, the following factors:

- 67 (a) The nature and severity of each offense;
- 68 (b) The record of prior offenses by the offender;
- 69 (c) The data gathered by the commission showing the duration and nature of sentences  
70 imposed for each crime; and
- 71 (d) The resources of the department of corrections and other authorities to carry out the  
72 punishments that are imposed.

73 (4) [The commission shall study alternative sentences, prison work programs, work  
74 release, home-based incarceration, probation and parole options, and any other programs and  
75 report the feasibility of these options in Missouri.

76 [(5) The commission shall publish and distribute its recommendations on or before July  
77 1, 2004. The commission shall study the implementation and use of the recommendations until  
78 July 1, 2005, and return a report to the governor, the speaker of the house of representatives, and  
79 the president pro tem of the senate. Following the July 1, 2005, report, the commission shall  
80 revise the recommended sentences every two years.

81 (6) [(4) The governor shall select a chairperson who shall call meetings of the  
82 commission as required or permitted pursuant to the purpose of the sentencing commission.

83 [(7)] (5) The members of the commission shall not receive compensation for their duties  
84 on the commission, but shall be reimbursed for actual and necessary expenses incurred in the  
85 performance of these duties and for which they are not reimbursed by reason of their other paid  
86 positions.

87 [(8)] (6) The circuit and associate circuit courts of this state, the office of the state courts  
88 administrator, the department of public safety, and the department of corrections shall cooperate

89 with the commission by providing information or access to information needed by the  
90 commission. The office of the state courts administrator will provide needed staffing resources.

91 7. Courts shall retain discretion to lower or exceed the sentence recommended by the  
92 commission as otherwise allowable by law, and to order restorative justice methods, when  
93 applicable.

94 8. If the imposition or execution of a sentence is suspended, the court may order any or  
95 all of the following restorative justice methods, or any other method that the court finds just or  
96 appropriate:

97 (1) Restitution to any victim or a statutorily created fund for costs incurred as a result  
98 of the offender's actions;

99 (2) Offender treatment programs;

100 (3) Mandatory community service;

101 (4) Work release programs in local facilities; and

102 (5) Community-based residential and nonresidential programs.

103 9. The provisions of this section shall apply only to offenses occurring on or after  
104 August 28, 2003.

105 10. Pursuant to subdivision (1) of subsection 8 of this section, the court may order the  
106 assessment and payment of a designated amount of restitution to a county law enforcement  
107 restitution fund established by the county commission pursuant to section 50.565. Such  
108 contribution shall not exceed three hundred dollars for any charged offense. Any restitution  
109 moneys deposited into the county law enforcement restitution fund pursuant to this section shall  
110 only be expended pursuant to the provisions of section 50.565.

111 11. A judge may order payment to a restitution fund only if such fund had been created  
112 by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall  
113 not have any direct supervisory authority or administrative control over any fund to which the  
114 judge is ordering a defendant to make payment.

115 12. A defendant who fails to make a payment to a county law enforcement restitution  
116 fund may not have his or her probation revoked solely for failing to make such payment unless  
117 the judge, after evidentiary hearing, makes a finding supported by a preponderance of the  
118 evidence that the defendant either willfully refused to make the payment or that the defendant  
119 willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the  
120 resources to pay.

121 **13. Nothing in this section shall be construed to allow the sentencing advisory**  
122 **commission to issue recommended sentences in specific cases pending in the courts of this**  
123 **state.**

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